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8 Attorney for Defendant  
9 SUSAN E. D'ORTA

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12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA	)	CASE NO.: CR.S-04-0026 WBS
Plaintiff,	)	PROPOSED STIPULATION
v.	)	AND ORDER TO RE: EXCLUDABLE
SUSAN E. D'ORTA	)	TIME
Defendant.	)	
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Comes now Defendant Susan E. D'Orta, by and through her attorney, Dwight M. Samuel and counsel for the Government, Daniel Lindhart, to request the court make a ruling of excludable time under the speedy trial act (18 U.S.C. § 3161) in the above enumerated case.

The motion is based upon the declaration of Dwight M. Samuel and the attached points and authorities.

Defendant seeks to exclude time from the date of November 23, 2005 through and including February 9, 2006 which is the next status conference.

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1        Both parties stipulate this motion is based upon the need for attorney  
2 preparation which is excludable time under local code T-2 ( 18 U.S.C. §  
3 3161(h)(8)(b)(ii)). In addition, both parties stipulate that the court may continue to rule  
4 that this case is complex and time may be excluded under this theory pursuant to local  
5 rule T-4.  
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8 Dated: November 23, 2005  
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/S/

DWIGHT M. SAMUEL  
Attorney for Defendant  
SUSAN D'ORTA aka SUSAN DUPREE

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Dated: November 23, 2005  
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/S/

Daniel Lindhart  
AUSA  
(Signed per Telephonic Authorization)

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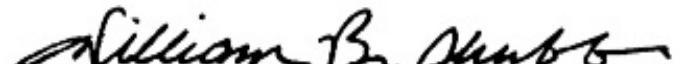
IT IS SO ORDERED.

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DATED: November 28, 2005

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WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE

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## Points and Authorities

18 U.S.C. 3161

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

See e.g. *United States v. Lloyd*, 125 F.3d 1263 (9<sup>th</sup> Cir. 1997); *United States v. Engstrom*, 7 F.3d 1423 (9<sup>th</sup> Cir. 1993); *United States v. Perez-Reveles*, 715 F.2d 1348 (9<sup>th</sup> Cir. 1983).

Time resulting from discovery motions filed by one of two codefendants was excludable for speedy trial purposes with respect to both defendants. *U.S. v. Mayes*, D.Kan.1989, 729 F.Supp. 87, on subsequent appeal 917 F.2d 457, certiorari denied 111 S.Ct. 1087, 498 U.S. 1125, 112 L.Ed.2d 1192, post- conviction relief denied 844 F.Supp. 677, affirmed 36 F.3d 1106, appeal dismissed 124 F.3d 218.

Dated: November 23, 2005

/S/  
DWIGHT M. SAMUEL  
Attorney for Defendant  
SUSAN D'ORTA aka SUSAN DUPREE